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RECENT CASES.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — FRAUD: LIABILITY OF PRINCIPAL FOR FRAUD OF AGENT COMMITTED FOR BENEFIT OF AGENT. — The defendant's clerk, who conducted the defendant's conveyancing business without supervision, fraudulently induced the plaintiff to convey her property to him, and then disposed of the property for his own benefit. *Held*, that the defendant is liable. *Lloyd* v. *Grace, Smith, & Co.*, [1912] A. C. 716.

The House of Lords in this case overrules the former English doctrine that a principal is not liable for the fraud of an agent unless benefited by the fraud. *British Mutual Banking Co.* v. *Charnwood Forest Ry. Co.*, 18 Q. B. D. 714. See *Ruben* v. *Great Fingall Consolidated*, [1906] A. C. 439, 446; *Whitechurch* v. *Cavanagh*, [1902] A. C. 117, 141. The American cases make no such requirement. *Tome* v. *Parkersburg Branch R. Co.*, 39 Md. 36; *McCord* v. *Western Union Tel. Co.*, 39 Minn. 181. The principal's liability for contracts made by his agent has never been thus limited. *Hambro* v. *Burnand*, [1904] 2 K. B. 10; *North River Bank* v. *Aymar*, 3 Hill (N. Y.) 262. The principal case, in assimilating the fraud cases to the contract cases, correctly decides that the motive of the agent, which is material in creating other tort liability, has here no logical bearing. The fundamental question as to which of the two innocent parties should bear the loss should be resolved against the principal when the defrauded party has dealt with an agent, and his acts are of the very kind which he is employed to do.

BILLS AND NOTES — PAYMENT AND DISCHARGE — MAKER NOT DISCHARGED BY INDORSER'S PAYMENT TO INDORSEE. — The indorser of a note paid the full amount of the note to the indorsee. The latter retained possession of the instrument, and subsequently sued the maker. *Held*, that he can recover the full amount of the note. *Bierce* v. *State National Bank*, 127 Pac. 856 (Okla.).

The acceptor of a bill is not discharged by the drawer's payment to the indorsee. *Jones* v. *Broadhurst*, 9 C. B. 173; *Bank of Montreal* v. *Armour*, 9 U. C. C. P. 401. *Contra, Bacon* v. *Searle*, 1 H. Bl. 88. Most of the few cases where the instrument is a note properly follow the bill cases. *Madison Square Bank* v. *Pierce*, 137 N. Y. 444; *Bank of America* v. *Senior*, 11 R. I. 376. The drawer or indorser, upon payment to the indorsee, can obtain the instrument and hold the acceptor or maker on it, as such payment is not an extinguishment. *Callow* v. *Lawrence*, 3 Maule & S. 95; *Hartzell* v. *McClurg*, 54 Neb. 316, 74 N. W. 626. Therefore the indorsee, when he retains and sues on the instrument, is simply enforcing the drawer's or indorser's rights. Hence he holds the money recovered in trust for the drawer or indorser. See *Cook* v. *Lister*, 13 C. B. N. S. 543, 591; *Thornton* v. *Maynard*, L. R. 10 C. P. 695, 698. To cases where the person who pays the indorsee is an accommodated party this reasoning is of course inapplicable. See *Madison Square Bank* v. *Pierce*, *supra*, 450; *Cook* v. *Lister*, *supra*, 591.

CONFLICT OF LAWS — JURISDICTION FOR DIVORCE — DIVORCE DECREE AT MATRIMONIAL DOMICILE ENTITLED TO FULL FAITH AND CREDIT. — A wife deserted her husband in the state where they had a matrimonial domicile and went to another jurisdiction. The husband procured a divorce in the court of his state. Later the wife brought an action for divorce and alimony in the jurisdiction to which she had fled. In this action the husband pleaded the

divorce decree given at the matrimonial domicile. The plaintiff demurred to the plea. *Held*, that the demurrer should be overruled. *Thompson* v. *Thompson*, 226 U. S. 551, 33 Sup. Ct. 129.

The court reaffirms the doctrine established by its former decisions, that a divorce decree is entitled to full faith and credit only when it is given by the state of the matrimonial domicile, or when personal service is made upon the party not domiciled within the jurisdiction making the decree. *Atherton* v. *Atherton*, 181 U. S. 155, 21 Sup. Ct. 544; *Cheever* v. *Wilson*, 9 Wall. (U. S.) 108. See *Haddock* v. *Haddock*, 201 U. S. 562, 567, 26 Sup. Ct. 525, 526. But the decision in the principal case would be reached upon any of the theories of divorce jurisdiction adhered to in other courts. *Cf. Larquie* v. *Larquie*, 40 La. Ann. 457, 4 So. 335; *Burtis* v. *Burtis*, 161 Mass. 508, 37 N. E. 740; *Le Mesurier* v. *Le Mesurier*, [1895] A. C. 517. See 19 HARV. L. REV. 586; 21 *id.* 296.

CONFLICT OF LAWS — JURISDICTION FOR DIVORCE — SEPARATE DOMICILE OF WIFE. — A Greek, domiciled in his native country, married an Englishwoman at her domicile in England. No matrimonial domicile was ever established. A Greek court annulled the marriage because the ceremony was not performed in the presence of a Greek priest, as required by the laws of Greece. The husband married again, and the wife, having returned to live in England, sued for a divorce. *Held*, that the divorce will be granted. *Stathatos* v. *Stathdtos*, 57 Sol. J. 114, 107 L. T. R. 592, 29 T. L. R. 54 (Eng., P. D., 1912). See NOTES, p. 447.

CONFLICT OF LAWS — RECOGNITION OF FOREIGN JUDGMENTS — REVERSAL OF JUDGMENT AS DEFENSE TO JUDGMENT BASED UPON REVERSED JUDGMENT. — In an action in New York on a Wisconsin judgment, the defendant set up a California judgment by way of counterclaim. The California judgment was based upon a reversed Wisconsin judgment. The plaintiff had obtained an order vacating the California judgment, but the validity of this order was questionable. *Held*, that the reversal of the Wisconsin judgment is a defense to the California judgment based upon it. *Ellis* v. *Delafield*, 153 N. Y. App. Div. 26. See NOTES, p. 437.

CONSTITUTIONAL LAW — PERSONAL RIGHTS: RELIGIOUS LIBERTY — CONSTITUTIONALITY OF FEE TO SUPPORT CHRISTIAN ASSOCIATION IN STATE COLLEGE. — The board of regents of a state college in Oklahoma required, as a condition precedent to admission, the payment of a fee, part of which was devoted to the maintenance of a Young Men's Christian Association. The state constitution provided that "No public money . . . shall ever be appropriated, . . . directly or indirectly, for the use, benefit or support of any sect, church, denomination, or system of religion. . . ." *Held*, that the requirement of the fee is unconstitutional. *Connell* v. *Gray*, 127 Pac. 417 (Okla.).

The Young Men's Christian Associations, having for their avowed purpose the spread of Christianity and a membership test based on belief in orthodox Christian principles, seem well within the constitutional provision prohibiting public support to any "system of religion." Requiring a fee to support such organizations as a condition precedent to matriculation seems a clearer constitutional violation than Bible reading in public schools, which under similar provisions has been held unlawful. *State ex rel. Weiss* v. *District Board*, 76 Wis. 177, 44 N. W. 967; *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 92 N. E. 251. Other cases apparently opposed to these declare exercises based on the Bible lawful when unaccompanied by comment, and non-compulsory, but these were decided under constitutions whose provisions were much less comprehensive than the one in the principal case. *Moore* v. *Monroe*, 64 Ia. 367, 20 N. W. 475; *Pfeiffer* v. *Board of Education*, 118 Mich. 560, 77 N. W. 250.